IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

CRP.No. 261 of 2006()

AGAINST THE ORDER DT.11.12.03 IN SMC.480/1977 OF TALUK LAND BOARD MANANTHAVADY .

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REVN. PETITIONER:

STATE OF KERALA.

BY GOVERNMENT PLEADER

RESPONDENT:

THE PRESIDENT/SECRETARY,
SALAHUL ISLAM, COMMITTEE,
PAZHANCHANA, P.O.VELLAMUNDA.

BY ADV. SRI.BABU S. NAIR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.Sasidharan Nambiar,J.

C.R.P.No.261 of 2006

Dated, this the 15th day of January, 2007

O R D E R

State is challenging the proceedings of Taluk Land Board dated 11.12.03 whereunder, holding that State Land Board had declared respondent Institution as a religious institution of public nature, Taluk Land Board dropped the proceedings initiated against the respondent under section 85 of Kerala Land Reforms Act.

2. The Taluk Land Board, Mananthavady had originally initiated ceiling case SMC 480/77 to surrender 8.72 acres. Case was reopened as there was no evidence to prove that respondent is a religious and charitable institution. Thereafter Taluk Land Board as per impugned order dated 11.12.03 held that State Land Board proceedings dated 31.8.71 available in old Taluk Land Board files show that State Land Board had declared

respondent institution as a religious institution of public nature and therefore dropped further proceedings in the ceiling case.

3. Learned Government pleader and learned counsel appearing for respondent were heard.

4. Learned Government pleader submitted that Explanation to Section 98A of Kerala Land Reforms Act mandates that neither the Taluk Land Board nor State Land Board is competent to decide the question whether respondent is a religious institution and that question can be decided only by State Government and therefore impugned order is to be quashed. Learned counsel appearing for respondent argued that under sub section (2) of Section 65, Taluk Land Board is competent to decide the question whether respondent is a religious institution of a public nature and therefore the order is not be quashed. It was also argued that respondent is a Wakf as is clear from Gazette Notification and therefore revision is only to be dismissed.

5. Section 65 provides special provisions relating to religious charitable or educational institution of public nature. Under the said section Land Board is competent to decide an application filed before it to choose whether the right, title , interest of institution in respect of holding should be vested in the Government in consideration of the payment of an annuity in perpetuity by the Government or whether it should be paid such annuity by the Government, instead of purchase price. in case the holding is purchased by cultivating tenant under the provisions of the Act. It has no application with regard to Chapter III dealing with the ceiling provisions. Section 98A provides that for the purpose of Chapter III the term 'person' shall not include a Co-operative Society or an institution of a public nature for religious or charitable purposes established and maintained by a religious denomination or any Section thereof or Board of Trustees for the improvements of city of Trivandrum constituted

under section 3 of Trivandrum City Improvement Trust Act 1960. Explanation makes the position absolutely clear. It reads:-

> "If any question arises as to whether an institution is an institution of a public nature for religious and charitable purposes maintained by a religious denomination or any section thereof, the question shall be decided by the Government and such decision shall be final.

Therefore under section 98A when any question arise as to whether an institution is an institution of a public nature for religious and charitable purposes maintained by a religious denomination or any section thereof, that question shall be decided by Government and not by Taluk land Board or by State Land Board and such decision of the Government

shall be final. The question has been considered by a learned single Judge (as His Lordship then was) of this Court in **Mother Superior v. Taluk Land Board (1989 (1) KLT 267.**) It was held that Taluk Land Board is not competent to decide that question without referring the matter to the government. That exactly is the position herein.

6. The impugned order is quashed. Taluk land Board is directed to refer the question whether respondent is an Institution of a public nature for religious and charitable denomination or any section thereof to the State Government and the decision of the Government shall be final on that question.

Civil Revision Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

Tpl/-